

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

I-KIEM RADON SMITH,

Plaintiff,

v.

JASON DOMBROSKY, et al.,

Defendants.

)
)
)
)
)
)
)
)

CIVIL ACTION No. 00-1007

MEMORANDUM

Padova, J.

July 2000

Plaintiff, I-Kiem Radon Smith ("Smith"), an inmate at the State Correctional Institution at Graterford, brings this action under 42 U.S.C. § 1983 against Defendants Jason Dombrosky and George Poploskie, correctional officers employed at Graterford. Before the Court is a Motion to Dismiss filed by Defendants. For the reasons that follow, the Court will deny the instant Motion.

I. BACKGROUND

The Complaint alleges that Plaintiff and Defendants engaged in an argument while Defendants were escorting Plaintiff from the general population to the restricted housing unit at Graterford. In the course of this argument, Plaintiff alleges that he was beaten by Defendants.

Plaintiff filed this Complaint on March 20, 2000. On May 4, 2000, Defendants filed this Motion to Dismiss, which is now ready for decision.

II. LEGAL STANDARD

A claim may be dismissed under Federal Rule of Civil Procedure 12(b)(6) only if the plaintiff can prove no set of facts in support of the claim that would entitle him to relief. ALA, Inc. v.

CCAIR, Inc., 29 F.3d 855, 859 (3rd Cir. 1994). The reviewing court must consider only those facts alleged in the complaint and accept all of the allegations as true. Id.; see also Rocks v. Philadelphia, 868 F.2d 644, 645 (3d Cir. 1989) (holding that in deciding a motion to dismiss for failure to state a claim, the court must "accept as true all allegations in the complaint and all reasonable inferences that can be drawn therefrom, and view them in the light most favorable to the nonmoving party").

III. DISCUSSION

Defendants move for dismissal based on their contention that Plaintiff has failed to exhaust available administrative remedies. The Prison Litigation Reform Act of 1995 provides that:

No action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted.

42 U.S.C. § 1997e(a).

The Pennsylvania Department of Corrections' Consolidated Inmate Grievance Review System, Policy Number DC-ADM 804, specifies the administrative remedies available to a prisoner confined in a state correctional institution. (Def. Ex. A.) This policy provides that, after attempted informal resolution of the problem, a written grievance may be submitted to the Grievance Coordinator. An inmate may then file an appeal from the Coordinator's decision in writing to the Facility Manager. Finally, the inmate may pursue a written appeal to the Department of Corrections' Central Office Review Committee.¹

Defendants claim that according to the regularly maintained records of the Department of

¹Pursuant to the October 1, 1997 Bulletin of the Department of Corrections, the Chief Hearing Examiner replaced the Central Office Review Committee as the final reviewer of all grievance appeals. (Def. Ex. A.)

Corrections, Plaintiff never submitted a grievance in compliance with the above grievance procedure regarding the incident described in the instant Complaint. Defendants insist that Plaintiff “failed to even pursue, much less exhaust,” any available administrative remedies. (Def. Mem. at 3.)

By contrast, Plaintiff contends that he filed a grievance in accordance with DC-ADM804 on September 30, 1998. Receiving no response, he states that he filed an appeal with the Graterford Superintendent on January 5, 1999. Again receiving no response, Plaintiff alleges that he then filed an appeal with the Central Office Review Committee on May 7, 1999. ²

Accepting Plaintiff’s allegations as true under ALA, Inc. v. CCAIR, Inc., the Court finds that Plaintiff has met his burden, in a suit under 42 U.S.C. 1997e, to “allege and show that [he has] exhausted all available state administrative remedies.” Payton v. Horn, 49 F. Supp.2d 791, 797 (E.D. Pa. 1999) (quoting Brown v. Toombs, 139 F.3d 1102, 1104 (6th Cir. 1998)). Moreover, because the United States Court of Appeals for the Third Circuit recently ruled that compliance with 42 U.S.C. § 1997e(a) is not a jurisdictional requirement, the Court need not hold an evidentiary hearing. Nyhuis v. Reno, 204 F.3d 65, 69 (3d Cir. 2000). For the foregoing reasons, the Court will deny Defendants’ Motion to Dismiss.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT

²The Department of Corrections Bulletin dated October 21, 1997 states that appeals sent to the Central Office are forwarded to the Chief Hearing Examiner. (Def. Ex. A.) Therefore, Plaintiff’s claim that he filed his final appeal with the Central Office Review Committee rather than with the Chief Hearing Examiner does not affect the Court’s analysis of whether Plaintiff’s allegations show that he has exhausted available administrative remedies.

FORTHEEASTERNDISTRICTOFPENNSYLVANIA

I-KIEMRADONSMITH,

)

)

Plaintiff,

)

)

v.

)

CIVIL ACTION No. 00-1007

)

JASON DOMBROSKY, et al.,

)

)

Defendants.

)

ORDER

AND NOW, this day of June, 2000, upon consideration of Defendants' Motion to Dismiss (Doc. No. 9) and Plaintiff's Response thereto (Doc. No. 10), **IT IS HEREBY ORDERED** that said Motion (Doc. No. 9) is **DENIED**.

BY THE COURT:

John R. Padova, J.